

Nos. 16-1285, 16-1307

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

JEANNIE K. MAY,

Plaintiff-Appellee/Cross-Appellant,

v.

NATIONSTAR MORTGAGE, LLC,

Defendant-Appellant/Cross-Appellee.

**Appeal from the United States District Court
for the Eastern District of Missouri – St. Louis
Hon. Thomas C. Mummert, III**

ADDENDUM TO APPELLANT'S OPENING BRIEF

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May 3, 2016

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Dated: May 3, 2016

/s/ Jeffrey M. Tillotson

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ATTORNEYS FOR APPELLANT

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VERDICT: INVASION OF PRIVACY

Note: Complete this form by writing in the name required by your verdict.

On the claim of plaintiff *Jeannie May* for invasion of privacy against defendant *Nationstar Mortgage Servicing LLC*, we, the undersigned jurors, find in favor of:

(Plaintiff *Jeannie May*)

or

(Defendant *Nationstar Mortgage LLC*)

Note: Complete the following paragraph only if the above finding is in favor of plaintiff, *Jeannie May*.

We, the undersigned jurors, assess the damages of plaintiff *Jeannie May* as follows:

For actual damages \$ 50,000 (stating the amount).

For punitive damages \$ 100,000 (state the amount or, if none, write the word, "none").

Date: 11/20/15



**VERDICT: VIOLATION OF THE FAIR DEBT COLLECTION
PRACTICES ACT (FDCPA)**

Note: Complete this form by writing in the name required by your verdict.

On the claim of plaintiff *Jeannie May* for violation of the Fair Debt Collection Practices Act (FDCPA) against defendant *Nationstar Mortgage Servicing LLC*, we, the undersigned jurors, find in favor of:

(Plaintiff *Jeannie May*)

or

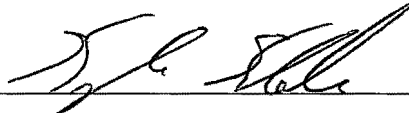
(Defendant *Nationstar Mortgage LLC*)

Note: Complete the following paragraph only if the above finding is in favor of plaintiff, *Jeannie May*.

We, the undersigned jurors, assess the damages of plaintiff *Jeannie May* as follows:

For actual damages \$ _____ (stating the amount).

Date: 11/20/2015



**VERDICT: VIOLATION OF THE REAL ESTATE SETTLEMENT
PRACTICES ACT (RESPA)**

Note: Complete this form by writing in the name required by your verdict.

On the claim of plaintiff *Jeannie May* for violation of the Real Estate Settlement Practices Act (RESPA) against defendant *Nationstar Mortgage Servicing LLC*, we, the undersigned jurors, find in favor of:

(Plaintiff *Jeannie May*)

or

(Defendant *Nationstar Mortgage LLC*)

Note: Complete the following paragraph only if the above finding is in favor of plaintiff, *Jeannie May*.

We, the undersigned jurors, assess the damages of plaintiff *Jeannie May* as follows:

For actual damages \$ _____ (stating the amount).

Date: 11/20/15

[Signature]

**VERDICT: NEGLIGENT VIOLATION OF THE FAIR CREDIT REPORTING ACT
(FCRA)**

Note: Complete this form by writing in the name required by your verdict.

On the claim of plaintiff *Jeannie May* for a negligent violation of the Fair Credit Reporting Act (FCRA) against defendant *Nationstar Mortgage Servicing LLC*, we, the undersigned jurors, find in favor of:

(Plaintiff *Jeannie May*)

or

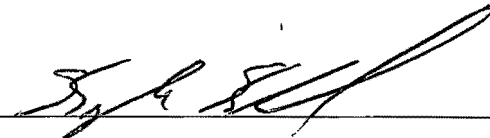
(Defendant *Nationstar Mortgage LLC*)

Note: Complete the following paragraph only if the above finding is in favor of plaintiff, *Jeannie May*.

We, the undersigned jurors, assess the damages of plaintiff *Jeannie May* as follows:

For actual damages \$ 20,000.00 (stating the amount).

Date: 11/20/15



**VERDICT: WILLFUL VIOLATION OF THE FAIR CREDIT REPORTING ACT
(FCRA)**

Note: Complete this form by writing in the name required by your verdict.

On the claim of plaintiff *Jeannie May* for a willful violation of the Fair Credit Reporting Act (FCRA) against defendant *Nationstar Mortgage Servicing LLC*, we, the undersigned jurors, find in favor of:

(Plaintiff *Jeannie May*)

or

(Defendant *Nationstar Mortgage LLC*)

Note: Complete the following paragraph only if the above finding is in favor of plaintiff, *Jeannie May*.

We, the undersigned jurors, assess the damages of plaintiff *Jeannie May* as follows:

For actual damages \$ _____ (stating the amount).

For punitive damages \$ _____ (state the amount or, if none, write the word, "none").

Date: 11/20/15



United States District Court
EASTERN DISTRICT OF MISSOURI

Jeannie K. May

Plaintiff,

v.

CASE NUMBER: 4:14CV578 TCM

Nationstar Mortgage, LLC

Defendant.

JUDGMENT IN A CIVIL CASE

- ☒ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- ☐ **Directed Verdict.** This action came before the Court for a trial by jury, the Court having sustained defendant's motion for judgment as a matter of law at the close of plaintiffs' case;
- ☐ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that: On the claim of Plaintiff Jeannie May for Invasion of Privacy, the jury finds for Plaintiff Jeannie May as follows: Actual damages to Plaintiff in the amount of \$50,000.00 and Punitive damages to Plaintiff in the amount of \$400,000.00. On the claim of Plaintiff Jeannie May for Negligent Violation of the Fair Credit Reporting Act (FCRA), the jury finds for Plaintiff Jeannie May as follows: Actual damages to Plaintiff in the amount of \$50,000.00. On the claims of Plaintiff Jeannie May for Violation of the Fair Debt Collection Practices Act (FDCPA), Willful Violation of the Fair Credit Reporting Act (FCRA), and Violation of the Real Estate Settlement Practices Act (RESPA), the jury finds for Defendant Nationstar Mortgage, LLC.

11/20/2015
DATE

Gregory J. Linhares
CLERK OF COURT

By:

/s/ Carol B. Long

Carol B. Long
DEPUTY CLERK

000006

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JEANNIE K. MAY,)
)
 Plaintiff,)
)
 v.) No. 4:14-CV-578-TCM
)
 NATIONSTAR MORTGAGE, LLC,)
)
 Defendant.)

JURY TRIAL
JURY INSTRUCTION CONFERENCE EXCERPT
FROM VOLUME 5

BEFORE THE HONORABLE THOMAS C. MUMMERT III
UNITED STATES DISTRICT JUDGE

NOVEMBER 20, 2015

APPEARANCES:

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United States District Court
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(Produced by computer-aided mechanical stenography.)

000007

1 (The following proceedings were held outside the hearing
2 and presence of the Jury.)

3 THE COURT: Okay. We are -- we are under the final
4 stretch of this trial, and the parties and I have spent
5 considerable time going through 30 instructions that will be
6 submitted to the Jury. At this time, the parties have
7 agreed -- both sides -- if I misstate this, I want you to let
8 me know. You haven't been shy so far, so I don't expect that
9 to happen here, but the parties have agreed that on all the
10 exhibits -- Plaintiff's and Defendant's -- and they've agreed
11 to sort all of the technical portions of that out at the time
12 when the Jury is already deliberating on the case, which means
13 that the exhibits are all going to be admitted. It's just a
14 question of what were the exhibits, quite frankly, and there
15 are some objections which the Court already ruled on in the
16 motions in limine, but beyond that, the exhibits will be taken
17 care of. Is that a fair statement? From the Plaintiff?

18 MR. WALLACE: Yes, Your Honor.

19 THE COURT: From the Defendant?

20 MR. TILLOTSON: It is, Your Honor.

21 THE COURT: Okay. I kind of cut off the Defendant
22 yesterday in terms of making a record for a motion for a
23 directed verdict at the end of the Plaintiff's case and at the
24 end of the entire case, so you may do that now.

25 MR. TILLOTSON: Thank you, Your Honor. The Defendant

1 makes a directed verdict on the following claims:

2 First, with respect to the Fair Debt Collection Act
3 claim, we believe there's insufficient evidence that
4 Nationstar was a debt collector under the statute, and since
5 we're not a debt collector, then a directed verdict is
6 appropriate on that.

7 Second, with respect to that same claim, we believe
8 that there is insufficient evidence that it was not a bona
9 fide good faith error by Nationstar and that there is
10 sufficient evidence as to our intent with respect to that
11 claim.

12 With respect to the invasion of privacy claim, we
13 make a directed verdict on that there is insufficient evidence
14 that Nationstar intentionally engaged in any conduct designed
15 to be outrageous or harm Ms. May.

16 With respect to the RESPA claim, we move for a
17 directed verdict on all requests sent to Nationstar that were
18 not directed to the address that we have identified as a
19 qualified written request. There was no evidence that we ever
20 waived or told her she need not send a qualified written
21 request. That would eliminate all requests sent other than
22 the ones that have that specific address.

23 I believe they've dropped the MMPA claim, so we'll
24 skip that one.

25 And then we move for a directed verdict with respect

1 to the remaining portions of the RESPA claim on that there is
2 insufficient evidence that Nationstar did not engage in
3 appropriate actions.

4 And, finally, we move for a directed verdict on two
5 aspects of their damages. First, her wage claims, which we
6 think there's insufficient evidence linking her alleged
7 quitting of her job as a result of us. And also the future
8 harm -- we think there's insufficient evidence laid that she
9 will have those losses in the future.

10 And we also move for a directed verdict on the
11 emotional distress. Although there has been some evidence
12 that she engaged in anguish, we move for a directed verdict.
13 There's been insufficient evidence for the amount of damages
14 which they're claiming based upon the conduct here being
15 unintentional.

16 On those grounds, Your Honor, we would urge a
17 directed verdict both at the close of their case --

18 THE COURT: Got it.

19 MR. TILLOTSON: And to speed this along, I would
20 reurge that since we have effectively closed our case, so
21 we've met the requirements of the rule.

22 THE COURT: Fair enough. The Court will deny your
23 motion for a directed verdict both at the end of the
24 Plaintiff's case and at the end of the entire case.

25 You all mentioned in chambers about that there are

1 six stipulations of fact which you all filed. Do you want me
2 to read those to the Jury?

3 MR. TILLOTSON: Yeah. I have no problem, Your Honor.
4 It's up to the Plaintiff. I have no problem.

5 MR. WALLACE: To tell you the truth, I don't remember
6 what they were.

7 THE COURT: One, it's stipulated I have -- the Court
8 has jurisdiction.

9 MR. WALLACE: Yeah. We don't need that.

10 THE COURT: Fannie Mae was the investor of the
11 Plaintiff's loan. You don't need that?

12 MR. WALLACE: Don't need that one either.

13 THE COURT: You don't need that. I'm going to
14 scratch these as we go here.

15 Third is that entered into her home loan for a
16 personal family household.

17 MR. WALLACE: Might as well.

18 THE COURT: Read that one.

19 May defaulted on her loan in 2007.

20 MR. WALLACE: I mean I think we've got that, but --

21 MR. TILLOTSON: I don't mind you reading that.
22 That's fine.

23 MR. WALLACE: Yeah, that's fine.

24 THE COURT: All right. The loan is a debt for
25 purposes of the Fair Debt Collection Practices Act.

1 MR. WALLACE: Yes.

2 MR. TILLOTSON: Yeah. We stipulated to that already.

3 THE COURT: And six is Nationstar states in its
4 response to the trustee's notice of right of cure filed with
5 the bankruptcy court that May had paid an amount required to
6 cure the pre-petition default through Chapter 13 plan in her
7 bankruptcy case and that May had also paid all
8 post-bankruptcy -- you probably want this read?

9 MR. WALLACE: Yes, sir.

10 THE COURT: Yeah. All right. I'll read that.

11 MR. HUMPHREYS: Your Honor, as far as the
12 stipulation, I thought about the publication --

13 THE COURT: Yeah. I already read that.

14 MR. HUMPHREYS: Okay. Would you just remind them
15 that that's also stipulated?

16 THE COURT: Yeah, I will.

17 All right. These are the instructions, and, again,
18 there are 30 of them.

19 No. 1 is MAI 2.01. It's offered by the Court.

20 2 is Eighth Circuit 1.04 by the Court.

21 3 is MAI -- or this is actually, yeah, MAI 2.03 by
22 the Court.

23 4 is MAI 2.02 by the Court.

24 And 5 is Eighth Circuit 3.04 by the Court.

25 6 is -- is the persons of equal standing. Actually,

1 I prepared it, but it's offered by the Defendant in this case.
2 All right.

3 Number 7 is stipulated facts. That's an Eighth
4 Circuit 2.04. That's -- I think that's by consent.

5 When you get to one where you guys have objections to
6 it, let me know.

7 MR. TILLOTSON: Yes, Your Honor.

8 THE COURT: 8 is the agency definition. That's 5.23,
9 the Eighth Circuit. That's by consent.

10 Now we get into the -- the claims.

11 Number 9 is the invasion of privacy, by Plaintiff,
12 citing *Sofka v. Thal*, 662 S.W.2d 502, and *Young, Doe versus*
13 *Young*. That's an Eighth Circuit case, 664 F.3d 727. Any
14 objections to that instruction?

15 MR. TILLOTSON: No, Your Honor, not on behalf of the
16 Defendant.

17 THE COURT: All right. 10 is the invasion of privacy
18 damages. There's all sorts of authorities, but the case
19 starts -- the instructions start with MAI 4.01. Any
20 objection?

21 MR. TILLOTSON: Your Honor, we object just to the
22 inclusion of damages in the future being improperly
23 recoverable. We would excise that language out.

24 THE COURT: Okay. Instruction 11 is invasion of
25 privacy punitive damages. That's MAI 10.01. That's by the

1 Plaintiff. Any objection?

2 MR. TILLOTSON: Yes, Your Honor. Just in general, I
3 want to -- if I didn't, it's only because I was -- we want to
4 also include in our motion for directed verdict on a claim for
5 punitive damages that there's been insufficient evidence with
6 the requisite intent level of outrageousness, and so we would
7 object to the inclusion in the jury charge of any question
8 with regard to punitive damages.

9 THE COURT: The Court will construe that as an
10 objection. Anytime punitive damages are mentioned in any of
11 these instructions, you can make a record if you choose, but I
12 will -- as far as I'm concerned, I think that's an ongoing
13 objection the Defendants have made throughout the trial.

14 MR. TILLOTSON: Okay, Your Honor. Thank you very
15 much.

16 THE COURT: All right. Then there's an invasion of
17 privacy verdict form.

18 Instruction 12 is violation of the Fair Debt
19 Collection Practices Act. That's -- boy, there's a lot of
20 authority there, but it cites the statute, which is 15 U.S.C.
21 § 1692. I will not cite the paragraph of cases that were
22 provided, obviously submitted by the Plaintiff. Any objection
23 to that?

24 MR. TILLOTSON: Just including our prior objections.
25 Other than that, Your Honor.

1 THE COURT: Fair enough.

2 13 is the strict liability on that same count.

3 Again, it's a number of cases, the first being *Coleman versus*
4 *Berman & Rabin, P.A.* That's a Judge Jackson case actually,
5 4:14-CV-1090. That's here in this court. And we'll just
6 leave it at that. Any objection to that instruction?

7 MR. TILLOTSON: No, Your Honor.

8 THE COURT: 14 is bona fide error. That's 15 U.S.C.
9 § 1692k. Any objection?

10 MR. HUMPHREYS: Plaintiff would object on the grounds
11 that it wasn't Plaintiff's affirmative defense and there's no
12 evidence of any reasonable procedures.

13 THE COURT: Okay. Thank you. Obviously, all of
14 these objections have been overruled in chambers, and they're
15 overruled now.

16 MR. HUMPHREYS: Yes.

17 THE COURT: 15 is the unsophisticated consumer
18 standard. That's, again, a number of statutes, but the
19 first -- I'm sorry -- cases. The first is *Wilhelm versus*
20 *Credico, Inc.*, 519 F.3d 416. It's an Eighth Circuit case from
21 2008. Any objections?

22 MR. TILLOTSON: Yes, Your Honor. We object on the
23 grounds that there wasn't sufficient evidence submitted that
24 she was misled by any of the actions.

25 THE COURT: Got it. 16 is the -- is actually damages

1 for that, that count. The same with 15 U.S.C. § 1692k. I'll
2 assume whatever objections you have will stick with that one.

3 And then, finally, on that count, there is a verdict
4 form.

5 Instruction 17 is the violation of the Real Estate
6 Settlement Procedures Act under 12 U.S.C. § 2605 and a number
7 of cases. Any objections?

8 MR. TILLOTSON: No, Your Honor.

9 THE COURT: 18 is the qualified written request
10 requirement, and that's under 12 U.S.C. § 2605(e)(1)(B).
11 That's a small (e). And any objections to that?

12 MR. TILLOTSON: Yes, Your Honor. I object to the
13 provisions in there regarding waiver and estoppel as not --

14 THE COURT: Got it.

15 MR. TILLOTSON: -- applicable under the law or
16 sufficient evidence to include it.

17 THE COURT: Got it. Okay. That's the one we fixed
18 back in the courtroom or chambers.

19 All right. 19 is the response requirements, 12
20 U.S.C. § --

21 MR. TILLOTSON: I'm sorry. May I interpose? We
22 had -- we had -- we're missing one. We had a request
23 regarding duplicate QWRs don't need responded to, that they
24 were okay with, that I thought the Court included.

25 THE COURT: It wasn't in the pile of stuff we looked

1 at today. I don't --

2 MR. WALLACE: I mean we talked about it last night,
3 but I don't remember where it went from there.

4 MR. TILLOTSON: It would have gone right there.

5 MR. WALLACE: I mean as far as what the ultimate
6 decision was on the thing.

7 MR. HUMPHREYS: I never saw a proposed instruction,
8 Your Honor.

9 THE COURT: I tell you what. If you all put
10 something together, I'll read it at the end of the deal if you
11 both agree to it, but --

12 MR. TILLOTSON: We will. We'll send you the right
13 cite and the proposed instruction. If you could just add it
14 to the end.

15 THE COURT: I'll just add it to the end, and, Amy,
16 just email it to me.

17 MR. TILLOTSON: We'll do it right now. We'll try to
18 be quick about it. Thank you, Your Honor.

19 THE COURT: All right. Do you have Carol's email
20 address?

21 MS. BREIHAN: I don't.

22 THE COURT: Just email it to me then. That's good.

23 All right. 18. I'm not sure if we did this or not.
24 Qualified written request. Yeah, we did.

25 And 19 is the response requirements under the Real

1 Estate Settlement Procedures Act.

2 20 is the damages instruction. Same case cited.

3 And then there's the verdict form on that.

4 21 is a violation of the Fair Credit Reporting Act.

5 That's 15 U.S.C. § 1681 and all sorts of cases, submitted by
6 Plaintiff.

7 22 is a Fair Debt -- Fair Credit Reporting Act
8 willful violation.

9 Damages for the willful violation is 23.

10 Punitive damages for the willful violation is 24.

11 And then there's a verdict form.

12 And then there's the negligent violation of that same
13 act instruction.

14 There's the damages for the negligent violation and
15 then the verdict form for that.

16 Then -- there it is -- damage on the multiple
17 theories. We've already got that. Isn't that what you were
18 looking for -- the damages on --

19 MR. HUMPHREYS: No.

20 MR. TILLOTSON: No. It would be that you don't have
21 to respond to a QWR if you're merely duplicating the --

22 THE COURT: I got it. I got it. I got it. Yeah. I
23 thought -- I don't know. I don't remember.

24 27 is damages on multiple legal theories. That's by
25 consent of the parties, and that's good enough.

1 MR. TILLOTSON: I'm sorry. What was the number of
2 that one, Your Honor?

3 THE COURT: 27.

4 28 -- what happened to 29? What the hell is going
5 on? Okay. It's not in this package here. 28 is the measure
6 of emotional distress. That's by -- I don't know who
7 submitted that actually. Plaintiffs probably.

8 29, which is not in this dirty copy, but it's the
9 measure of punitive damages which you've objected to. That's
10 the instruction that you have objected to.

11 MR. TILLOTSON: Correct, Your Honor.

12 THE COURT: And then 30 is MAI 3.06. Those are the
13 instructions, and maybe this other one that you all can put
14 together is what the Court will read to the Jury and submit to
15 the Jury.

16 I understand the Defendant has some instructions they
17 would -- they would like to submit.

18 MR. TILLOTSON: Oh, I'm sorry. Would Your Honor --
19 may I approach? Can I see Instruction No. 19 because it may
20 have been included with --

21 THE COURT: Here you go. Hand this to one of those
22 guys.

23 MR. TILLOTSON: Absolutely. There's so many dang
24 copies.

25 THE COURT: I remember the conversation, but it was

1 about 6:00 last night, and I was cooked, so I don't --

2 MR. TILLOTSON: So it's not in here.

3 MS. BREIHAN: It's not in the -- that -- I'm saying
4 instead of a separate instruction, it was --

5 MR. TILLOTSON: Let's do a separate instruction,
6 though.

7 MS. BREIHAN: Okay.

8 MR. TILLOTSON: Otherwise we'd have to reprint out
9 19.

10 THE COURT: No, we're not going to do that.

11 MR. TILLOTSON: It would go at the end of 19, right,
12 but we can also do it as a separate one.

13 THE COURT: That's okay. I would prefer that. That
14 would be fine. All right.

15 All right. I'm going to make this other record on
16 closing argument if you guys want to pay attention.

17 MR. TILLOTSON: Yes, Your Honor.

18 THE COURT: The parties have agreed that 35 minutes
19 of closing argument per side is appropriate. The Plaintiff
20 would like theirs split up 25 and 10 with two-minute warnings.
21 I will not -- I will let the -- on the Plaintiff's side, I'll
22 let the Plaintiff know when it's a two-minute warning and when
23 you've gotten to 25. I will not stop you after that. It's
24 your job to stop yourself. You'll be encroaching on the other
25 10 minutes.

1 MR. HUMPHREYS: Okay.

2 THE COURT: 35 minutes for the Defendant obviously,
3 and they want a two-minute warning. I advised the parties
4 last night -- obviously, all the lawyers are from other
5 jurisdictions, and in Missouri, the requirement has been and
6 I've always required, just as a matter of fairness, that if
7 the Plaintiff is going to ask for a specific amount of money
8 in its closing argument it must do so in the first part so
9 that the Defendant has a chance to rebut that in their
10 portion, in their closing argument.

11 MR. HUMPHREYS: Yes, Your Honor. Thank you.

12 THE COURT: Anything else on closing argument? And
13 let me know, Amy, when you've sent that.

14 MR. TILLOTSON: While she's doing that, Your Honor,
15 if I may just approach --

16 THE COURT: Uh-huh.

17 MR. TILLOTSON: -- we have two proposed --

18 THE COURT: Yes.

19 MR. TILLOTSON: -- instructions that we would request
20 the Court consider and add.

21 THE COURT: Yes.

22 MR. TILLOTSON: The first one is for the measure of
23 punitive damages. It's taken from the pattern Fifth Circuit.
24 If the Court declines that, we've also objected to the
25 punitive damages instructions the Court has done, and in

1 particular --

2 THE COURT: Let me ask you something.

3 MR. TILLOTSON: Yes, Your Honor.

4 THE COURT: If I accept this instruction, will you
5 not object to punitive damages?

6 MR. TILLOTSON: Of the inclusion to the Jury, I can't
7 do that, Your Honor.

8 THE COURT: Okay. I was just --

9 MR. TILLOTSON: Unfortunately, I cannot do that. I
10 can't. I just can't do that.

11 THE COURT: All right. I'm not -- I'm just --

12 MR. TILLOTSON: Right. And to the extent the Court
13 does include the one that is drawn from various aspects of the
14 law, we'd ask the Court to revise the financial resources
15 portion to be more in compliant with what the Fifth Circuit
16 does. And then second, we repeat our request to the Court to
17 instruct the Jury regarding the availability of attorneys'
18 fees and it will be handled by the jury, and we've included an
19 instruction we've drawn from other case law outside this
20 jurisdiction.

21 THE COURT: Got it. Those are Instructions A and B,
22 and they will both be refused.

23 MR. TILLOTSON: Right. And then we're going to try
24 and submit one, the last one, on duplicative QWRs. If they
25 reject it and the Court declines it, we would add that as C.

1 THE COURT: All right. How far along are we on that,
2 Amy?

3 MS. BREIHAN: I'm going to mail it in three minutes.

4 MR. HUMPHREYS: My office is pulling up the cite,
5 Your Honor, and once we take a look at that, we'll have a
6 response.

7 THE COURT: Okay. Yeah. All right.

8 MR. TILLOTSON: Your Honor, I do want to tell the
9 Court we really appreciate the hospitality we've been given
10 from the court staff. They've been very competent the last
11 few days.

12 THE COURT: Great. Thank you. Good.

13 MR. TILLOTSON: It's made our lives a lot easier. We
14 hope we haven't been too much of a burden.

15 THE COURT: No.

16 MR. TILLOTSON: It is nice because they've been very
17 helpful.

18 THE COURT: Yeah, they do a great job. Thank you.
19 They do a wonderful job.

20 I noticed you weren't thanking me for anything. It's
21 all right.

22 MR. TILLOTSON: I'm just saying, Your Honor. Come
23 on. Come on. I've got to see how it goes.

24 THE COURT: Yeah. It's too early. It's too early
25 for that.

1 All right. Let me go see. Amy, is that sent to me?
2 I don't want to keep bugging you, but I want to look at it
3 myself.

4 MS. BREIHAN: I'm typing my email to you right now.

5 THE COURT: Got it. All right. I'll go back and
6 look at it, and let's get that cleared up before we bring the
7 Jury in obviously.

8 MR. HUMPHREYS: Yes, Your Honor.

9 (Court recessed from 9:20 a.m. until 9:23 a.m.)

10 THE COURT: For the record, I'm adding 19A, which is
11 duplicate qualified written requests, and it's under
12 12 C.F.R. § 1024.35(g)(1)(i), and that's submitted by the
13 Defendants, and I'm not sure if Plaintiffs are objecting to it
14 or not.

15 MR. WALLACE: I'll find Dave and --

16 THE COURT: Yeah. Let's get this all figured out.

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18 section of the statute is read, but I don't believe it's
19 identical on that reg, I should say. I don't believe it's
20 identical.

21 THE COURT: That's all right. I've got it.

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23 their verdict or their instruction.

24 THE COURT: (g)(1)(i). I think it's a fair statement
25 of the law, and over the objection, it will be submitted.

1 MR. TILLOTSON: That's 19A?

2 THE COURT: It is. Do you want a copy of this 19A?

3 Here's what Amy sent me.

4 (End of excerpt.)

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CERTIFICATE

I, Gayle D. Madden, Registered Diplomate Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 19 inclusive.

Dated at St. Louis, Missouri, this 26th day of December, 2015.

/s/ Gayle D. Madden

GAYLE D. MADDEN, CSR, RDR, CRR

Official Court Reporter

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JEANNIE K. MAY,)
)
 Plaintiff,)
)
 v.) No. 4:14-CV-578-TCM
)
 NATIONSTAR MORTGAGE, LLC,)
)
 Defendant.)

JURY TRIAL
JURY INSTRUCTION CONFERENCE EXCERPT
FROM VOLUME 5

BEFORE THE HONORABLE THOMAS C. MUMMERT III
UNITED STATES DISTRICT JUDGE

NOVEMBER 20, 2015

APPEARANCES:

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REPORTED BY: Gayle D. Madden, CSR, RDR, CRR
United States District Court
111 South Tenth Street, Third Floor
St. Louis, MO 63102 (314) 244-7987
(Produced by computer-aided mechanical stenography.)

0000027

1 (The following proceedings were held outside the hearing
2 and presence of the Jury.)

3 THE COURT: Okay. We are -- we are under the final
4 stretch of this trial, and the parties and I have spent
5 considerable time going through 30 instructions that will be
6 submitted to the Jury. At this time, the parties have
7 agreed -- both sides -- if I misstate this, I want you to let
8 me know. You haven't been shy so far, so I don't expect that
9 to happen here, but the parties have agreed that on all the
10 exhibits -- Plaintiff's and Defendant's -- and they've agreed
11 to sort all of the technical portions of that out at the time
12 when the Jury is already deliberating on the case, which means
13 that the exhibits are all going to be admitted. It's just a
14 question of what were the exhibits, quite frankly, and there
15 are some objections which the Court already ruled on in the
16 motions in limine, but beyond that, the exhibits will be taken
17 care of. Is that a fair statement? From the Plaintiff?

18 MR. WALLACE: Yes, Your Honor.

19 THE COURT: From the Defendant?

20 MR. TILLOTSON: It is, Your Honor.

21 THE COURT: Okay. I kind of cut off the Defendant
22 yesterday in terms of making a record for a motion for a
23 directed verdict at the end of the Plaintiff's case and at the
24 end of the entire case, so you may do that now.

25 MR. TILLOTSON: Thank you, Your Honor. The Defendant

1 makes a directed verdict on the following claims:

2 First, with respect to the Fair Debt Collection Act
3 claim, we believe there's insufficient evidence that
4 Nationstar was a debt collector under the statute, and since
5 we're not a debt collector, then a directed verdict is
6 appropriate on that.

7 Second, with respect to that same claim, we believe
8 that there is insufficient evidence that it was not a bona
9 fide good faith error by Nationstar and that there is
10 sufficient evidence as to our intent with respect to that
11 claim.

12 With respect to the invasion of privacy claim, we
13 make a directed verdict on that there is insufficient evidence
14 that Nationstar intentionally engaged in any conduct designed
15 to be outrageous or harm Ms. May.

16 With respect to the RESPA claim, we move for a
17 directed verdict on all requests sent to Nationstar that were
18 not directed to the address that we have identified as a
19 qualified written request. There was no evidence that we ever
20 waived or told her she need not send a qualified written
21 request. That would eliminate all requests sent other than
22 the ones that have that specific address.

23 I believe they've dropped the MMPA claim, so we'll
24 skip that one.

25 And then we move for a directed verdict with respect

1 to the remaining portions of the RESPA claim on that there is
2 insufficient evidence that Nationstar did not engage in
3 appropriate actions.

4 And, finally, we move for a directed verdict on two
5 aspects of their damages. First, her wage claims, which we
6 think there's insufficient evidence linking her alleged
7 quitting of her job as a result of us. And also the future
8 harm -- we think there's insufficient evidence laid that she
9 will have those losses in the future.

10 And we also move for a directed verdict on the
11 emotional distress. Although there has been some evidence
12 that she engaged in anguish, we move for a directed verdict.
13 There's been insufficient evidence for the amount of damages
14 which they're claiming based upon the conduct here being
15 unintentional.

16 On those grounds, Your Honor, we would urge a
17 directed verdict both at the close of their case --

18 THE COURT: Got it.

19 MR. TILLOTSON: And to speed this along, I would
20 reurge that since we have effectively closed our case, so
21 we've met the requirements of the rule.

22 THE COURT: Fair enough. The Court will deny your
23 motion for a directed verdict both at the end of the
24 Plaintiff's case and at the end of the entire case.

25 You all mentioned in chambers about that there are

1 six stipulations of fact which you all filed. Do you want me
2 to read those to the Jury?

3 MR. TILLOTSON: Yeah. I have no problem, Your Honor.
4 It's up to the Plaintiff. I have no problem.

5 MR. WALLACE: To tell you the truth, I don't remember
6 what they were.

7 THE COURT: One, it's stipulated I have -- the Court
8 has jurisdiction.

9 MR. WALLACE: Yeah. We don't need that.

10 THE COURT: Fannie Mae was the investor of the
11 Plaintiff's loan. You don't need that?

12 MR. WALLACE: Don't need that one either.

13 THE COURT: You don't need that. I'm going to
14 scratch these as we go here.

15 Third is that entered into her home loan for a
16 personal family household.

17 MR. WALLACE: Might as well.

18 THE COURT: Read that one.

19 May defaulted on her loan in 2007.

20 MR. WALLACE: I mean I think we've got that, but --

21 MR. TILLOTSON: I don't mind you reading that.
22 That's fine.

23 MR. WALLACE: Yeah, that's fine.

24 THE COURT: All right. The loan is a debt for
25 purposes of the Fair Debt Collection Practices Act.

1 MR. WALLACE: Yes.

2 MR. TILLOTSON: Yeah. We stipulated to that already.

3 THE COURT: And six is Nationstar states in its
4 response to the trustee's notice of right of cure filed with
5 the bankruptcy court that May had paid an amount required to
6 cure the pre-petition default through Chapter 13 plan in her
7 bankruptcy case and that May had also paid all
8 post-bankruptcy -- you probably want this read?

9 MR. WALLACE: Yes, sir.

10 THE COURT: Yeah. All right. I'll read that.

11 MR. HUMPHREYS: Your Honor, as far as the
12 stipulation, I thought about the publication --

13 THE COURT: Yeah. I already read that.

14 MR. HUMPHREYS: Okay. Would you just remind them
15 that that's also stipulated?

16 THE COURT: Yeah, I will.

17 All right. These are the instructions, and, again,
18 there are 30 of them.

19 No. 1 is MAI 2.01. It's offered by the Court.

20 2 is Eighth Circuit 1.04 by the Court.

21 3 is MAI -- or this is actually, yeah, MAI 2.03 by
22 the Court.

23 4 is MAI 2.02 by the Court.

24 And 5 is Eighth Circuit 3.04 by the Court.

25 6 is -- is the persons of equal standing. Actually,

1 I prepared it, but it's offered by the Defendant in this case.
2 All right.

3 Number 7 is stipulated facts. That's an Eighth
4 Circuit 2.04. That's -- I think that's by consent.

5 When you get to one where you guys have objections to
6 it, let me know.

7 MR. TILLOTSON: Yes, Your Honor.

8 THE COURT: 8 is the agency definition. That's 5.23,
9 the Eighth Circuit. That's by consent.

10 Now we get into the -- the claims.

11 Number 9 is the invasion of privacy, by Plaintiff,
12 citing *Sofka v. Thal*, 662 S.W.2d 502, and *Young, Doe versus*
13 *Young*. That's an Eighth Circuit case, 664 F.3d 727. Any
14 objections to that instruction?

15 MR. TILLOTSON: No, Your Honor, not on behalf of the
16 Defendant.

17 THE COURT: All right. 10 is the invasion of privacy
18 damages. There's all sorts of authorities, but the case
19 starts -- the instructions start with MAI 4.01. Any
20 objection?

21 MR. TILLOTSON: Your Honor, we object just to the
22 inclusion of damages in the future being improperly
23 recoverable. We would excise that language out.

24 THE COURT: Okay. Instruction 11 is invasion of
25 privacy punitive damages. That's MAI 10.01. That's by the

1 Plaintiff. Any objection?

2 MR. TILLOTSON: Yes, Your Honor. Just in general, I
3 want to -- if I didn't, it's only because I was -- we want to
4 also include in our motion for directed verdict on a claim for
5 punitive damages that there's been insufficient evidence with
6 the requisite intent level of outrageousness, and so we would
7 object to the inclusion in the jury charge of any question
8 with regard to punitive damages.

9 THE COURT: The Court will construe that as an
10 objection. Anytime punitive damages are mentioned in any of
11 these instructions, you can make a record if you choose, but I
12 will -- as far as I'm concerned, I think that's an ongoing
13 objection the Defendants have made throughout the trial.

14 MR. TILLOTSON: Okay, Your Honor. Thank you very
15 much.

16 THE COURT: All right. Then there's an invasion of
17 privacy verdict form.

18 Instruction 12 is violation of the Fair Debt
19 Collection Practices Act. That's -- boy, there's a lot of
20 authority there, but it cites the statute, which is 15 U.S.C.
21 § 1692. I will not cite the paragraph of cases that were
22 provided, obviously submitted by the Plaintiff. Any objection
23 to that?

24 MR. TILLOTSON: Just including our prior objections.
25 Other than that, Your Honor.

1 THE COURT: Fair enough.

2 13 is the strict liability on that same count.

3 Again, it's a number of cases, the first being *Coleman versus*
4 *Berman & Rabin, P.A.* That's a Judge Jackson case actually,
5 4:14-CV-1090. That's here in this court. And we'll just
6 leave it at that. Any objection to that instruction?

7 MR. TILLOTSON: No, Your Honor.

8 THE COURT: 14 is bona fide error. That's 15 U.S.C.
9 § 1692k. Any objection?

10 MR. HUMPHREYS: Plaintiff would object on the grounds
11 that it wasn't Plaintiff's affirmative defense and there's no
12 evidence of any reasonable procedures.

13 THE COURT: Okay. Thank you. Obviously, all of
14 these objections have been overruled in chambers, and they're
15 overruled now.

16 MR. HUMPHREYS: Yes.

17 THE COURT: 15 is the unsophisticated consumer
18 standard. That's, again, a number of statutes, but the
19 first -- I'm sorry -- cases. The first is *Wilhelm versus*
20 *Credico, Inc.*, 519 F.3d 416. It's an Eighth Circuit case from
21 2008. Any objections?

22 MR. TILLOTSON: Yes, Your Honor. We object on the
23 grounds that there wasn't sufficient evidence submitted that
24 she was misled by any of the actions.

25 THE COURT: Got it. 16 is the -- is actually damages

1 for that, that count. The same with 15 U.S.C. § 1692k. I'll
2 assume whatever objections you have will stick with that one.

3 And then, finally, on that count, there is a verdict
4 form.

5 Instruction 17 is the violation of the Real Estate
6 Settlement Procedures Act under 12 U.S.C. § 2605 and a number
7 of cases. Any objections?

8 MR. TILLOTSON: No, Your Honor.

9 THE COURT: 18 is the qualified written request
10 requirement, and that's under 12 U.S.C. § 2605(e)(1)(B).
11 That's a small (e). And any objections to that?

12 MR. TILLOTSON: Yes, Your Honor. I object to the
13 provisions in there regarding waiver and estoppel as not --

14 THE COURT: Got it.

15 MR. TILLOTSON: -- applicable under the law or
16 sufficient evidence to include it.

17 THE COURT: Got it. Okay. That's the one we fixed
18 back in the courtroom or chambers.

19 All right. 19 is the response requirements, 12
20 U.S.C. § --

21 MR. TILLOTSON: I'm sorry. May I interpose? We
22 had -- we had -- we're missing one. We had a request
23 regarding duplicate QWRs don't need responded to, that they
24 were okay with, that I thought the Court included.

25 THE COURT: It wasn't in the pile of stuff we looked

1 at today. I don't --

2 MR. WALLACE: I mean we talked about it last night,
3 but I don't remember where it went from there.

4 MR. TILLOTSON: It would have gone right there.

5 MR. WALLACE: I mean as far as what the ultimate
6 decision was on the thing.

7 MR. HUMPHREYS: I never saw a proposed instruction,
8 Your Honor.

9 THE COURT: I tell you what. If you all put
10 something together, I'll read it at the end of the deal if you
11 both agree to it, but --

12 MR. TILLOTSON: We will. We'll send you the right
13 cite and the proposed instruction. If you could just add it
14 to the end.

15 THE COURT: I'll just add it to the end, and, Amy,
16 just email it to me.

17 MR. TILLOTSON: We'll do it right now. We'll try to
18 be quick about it. Thank you, Your Honor.

19 THE COURT: All right. Do you have Carol's email
20 address?

21 MS. BREIHAN: I don't.

22 THE COURT: Just email it to me then. That's good.

23 All right. 18. I'm not sure if we did this or not.
24 Qualified written request. Yeah, we did.

25 And 19 is the response requirements under the Real

1 Estate Settlement Procedures Act.

2 20 is the damages instruction. Same case cited.

3 And then there's the verdict form on that.

4 21 is a violation of the Fair Credit Reporting Act.

5 That's 15 U.S.C. § 1681 and all sorts of cases, submitted by
6 Plaintiff.

7 22 is a Fair Debt -- Fair Credit Reporting Act
8 willful violation.

9 Damages for the willful violation is 23.

10 Punitive damages for the willful violation is 24.

11 And then there's a verdict form.

12 And then there's the negligent violation of that same
13 act instruction.

14 There's the damages for the negligent violation and
15 then the verdict form for that.

16 Then -- there it is -- damage on the multiple
17 theories. We've already got that. Isn't that what you were
18 looking for -- the damages on --

19 MR. HUMPHREYS: No.

20 MR. TILLOTSON: No. It would be that you don't have
21 to respond to a QWR if you're merely duplicating the --

22 THE COURT: I got it. I got it. I got it. Yeah. I
23 thought -- I don't know. I don't remember.

24 27 is damages on multiple legal theories. That's by
25 consent of the parties, and that's good enough.

1 MR. TILLOTSON: I'm sorry. What was the number of
2 that one, Your Honor?

3 THE COURT: 27.

4 28 -- what happened to 29? What the hell is going
5 on? Okay. It's not in this package here. 28 is the measure
6 of emotional distress. That's by -- I don't know who
7 submitted that actually. Plaintiffs probably.

8 29, which is not in this dirty copy, but it's the
9 measure of punitive damages which you've objected to. That's
10 the instruction that you have objected to.

11 MR. TILLOTSON: Correct, Your Honor.

12 THE COURT: And then 30 is MAI 3.06. Those are the
13 instructions, and maybe this other one that you all can put
14 together is what the Court will read to the Jury and submit to
15 the Jury.

16 I understand the Defendant has some instructions they
17 would -- they would like to submit.

18 MR. TILLOTSON: Oh, I'm sorry. Would Your Honor --
19 may I approach? Can I see Instruction No. 19 because it may
20 have been included with --

21 THE COURT: Here you go. Hand this to one of those
22 guys.

23 MR. TILLOTSON: Absolutely. There's so many dang
24 copies.

25 THE COURT: I remember the conversation, but it was

1 about 6:00 last night, and I was cooked, so I don't --

2 MR. TILLOTSON: So it's not in here.

3 MS. BREIHAN: It's not in the -- that -- I'm saying
4 instead of a separate instruction, it was --

5 MR. TILLOTSON: Let's do a separate instruction,
6 though.

7 MS. BREIHAN: Okay.

8 MR. TILLOTSON: Otherwise we'd have to reprint out
9 19.

10 THE COURT: No, we're not going to do that.

11 MR. TILLOTSON: It would go at the end of 19, right,
12 but we can also do it as a separate one.

13 THE COURT: That's okay. I would prefer that. That
14 would be fine. All right.

15 All right. I'm going to make this other record on
16 closing argument if you guys want to pay attention.

17 MR. TILLOTSON: Yes, Your Honor.

18 THE COURT: The parties have agreed that 35 minutes
19 of closing argument per side is appropriate. The Plaintiff
20 would like theirs split up 25 and 10 with two-minute warnings.
21 I will not -- I will let the -- on the Plaintiff's side, I'll
22 let the Plaintiff know when it's a two-minute warning and when
23 you've gotten to 25. I will not stop you after that. It's
24 your job to stop yourself. You'll be encroaching on the other
25 10 minutes.

1 MR. HUMPHREYS: Okay.

2 THE COURT: 35 minutes for the Defendant obviously,
3 and they want a two-minute warning. I advised the parties
4 last night -- obviously, all the lawyers are from other
5 jurisdictions, and in Missouri, the requirement has been and
6 I've always required, just as a matter of fairness, that if
7 the Plaintiff is going to ask for a specific amount of money
8 in its closing argument it must do so in the first part so
9 that the Defendant has a chance to rebut that in their
10 portion, in their closing argument.

11 MR. HUMPHREYS: Yes, Your Honor. Thank you.

12 THE COURT: Anything else on closing argument? And
13 let me know, Amy, when you've sent that.

14 MR. TILLOTSON: While she's doing that, Your Honor,
15 if I may just approach --

16 THE COURT: Uh-huh.

17 MR. TILLOTSON: -- we have two proposed --

18 THE COURT: Yes.

19 MR. TILLOTSON: -- instructions that we would request
20 the Court consider and add.

21 THE COURT: Yes.

22 MR. TILLOTSON: The first one is for the measure of
23 punitive damages. It's taken from the pattern Fifth Circuit.
24 If the Court declines that, we've also objected to the
25 punitive damages instructions the Court has done, and in

1 particular --

2 THE COURT: Let me ask you something.

3 MR. TILLOTSON: Yes, Your Honor.

4 THE COURT: If I accept this instruction, will you
5 not object to punitive damages?

6 MR. TILLOTSON: Of the inclusion to the Jury, I can't
7 do that, Your Honor.

8 THE COURT: Okay. I was just --

9 MR. TILLOTSON: Unfortunately, I cannot do that. I
10 can't. I just can't do that.

11 THE COURT: All right. I'm not -- I'm just --

12 MR. TILLOTSON: Right. And to the extent the Court
13 does include the one that is drawn from various aspects of the
14 law, we'd ask the Court to revise the financial resources
15 portion to be more in compliant with what the Fifth Circuit
16 does. And then second, we repeat our request to the Court to
17 instruct the Jury regarding the availability of attorneys'
18 fees and it will be handled by the jury, and we've included an
19 instruction we've drawn from other case law outside this
20 jurisdiction.

21 THE COURT: Got it. Those are Instructions A and B,
22 and they will both be refused.

23 MR. TILLOTSON: Right. And then we're going to try
24 and submit one, the last one, on duplicative QWRs. If they
25 reject it and the Court declines it, we would add that as C.

1 THE COURT: All right. How far along are we on that,
2 Amy?

3 MS. BREIHAN: I'm going to mail it in three minutes.

4 MR. HUMPHREYS: My office is pulling up the cite,
5 Your Honor, and once we take a look at that, we'll have a
6 response.

7 THE COURT: Okay. Yeah. All right.

8 MR. TILLOTSON: Your Honor, I do want to tell the
9 Court we really appreciate the hospitality we've been given
10 from the court staff. They've been very competent the last
11 few days.

12 THE COURT: Great. Thank you. Good.

13 MR. TILLOTSON: It's made our lives a lot easier. We
14 hope we haven't been too much of a burden.

15 THE COURT: No.

16 MR. TILLOTSON: It is nice because they've been very
17 helpful.

18 THE COURT: Yeah, they do a great job. Thank you.
19 They do a wonderful job.

20 I noticed you weren't thanking me for anything. It's
21 all right.

22 MR. TILLOTSON: I'm just saying, Your Honor. Come
23 on. Come on. I've got to see how it goes.

24 THE COURT: Yeah. It's too early. It's too early
25 for that.

1 All right. Let me go see. Amy, is that sent to me?
2 I don't want to keep bugging you, but I want to look at it
3 myself.

4 MS. BREIHAN: I'm typing my email to you right now.

5 THE COURT: Got it. All right. I'll go back and
6 look at it, and let's get that cleared up before we bring the
7 Jury in obviously.

8 MR. HUMPHREYS: Yes, Your Honor.

9 (Court recessed from 9:20 a.m. until 9:23 a.m.)

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11 duplicate qualified written requests, and it's under
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14 or not.

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18 section of the statute is read, but I don't believe it's
19 identical on that reg, I should say. I don't believe it's
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21 THE COURT: That's all right. I've got it.

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25 of the law, and over the objection, it will be submitted.

1 MR. TILLOTSON: That's 19A?

2 THE COURT: It is. Do you want a copy of this 19A?

3 Here's what Amy sent me.

4 (End of excerpt.)

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CERTIFICATE

I, Gayle D. Madden, Registered Diplomate Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 19 inclusive.

Dated at St. Louis, Missouri, this 26th day of December, 2015.

/s/ Gayle D. Madden

GAYLE D. MADDEN, CSR, RDR, CRR

Official Court Reporter